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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. VICTOR MANUEL CARLON, JR., Defendant and Appellant.	D075150 (Super. Ct. No. 16CR042758)

APPEAL from a judgment of the Superior Court of San Bernardino County, Mary E. Fuller, Judge. Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Susan Elizabeth Miller, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Victor Manuel Carlon, Jr., guilty of resisting an executive officer by force or violence under Penal Code[1] section 69, a felony, and willful interference with a police animal under section 600, subdivision (b), a misdemeanor. The trial court also found two of Carlon's prior prison terms to be true under section 667.5, subdivision (b). The court sentenced Carlon to a total term of four years in prison.

On appeal, Carlon contends there was insufficient evidence to support the convictions because the prosecution did not meet its burden of proving the police were acting lawfully, without use of unreasonable or excessive force, when they arrested him, and when they commanded the police service dog to attack him. Carlon claims he did not resist the police officers by force or violence because he was not behaving aggressively when the officers used force. He also claims he did not willfully interfere with a police service animal because he was reasonably acting in self-defense when the police service dog attacked him. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

This case arose from an incident that took place near the Fontana Metrolink train station on the evening of August 19, 2016, when officers from the Fontana Police Department arrested Carlon for being under the influence of methamphetamine. After Carlon failed to comply with the police officers' repeated verbal commands to show his hands and lie down on the ground, they developed a tactical plan in an effort to gain Carlon's compliance and stop him from fighting the officers and their police canine.

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1 All further statutory references are to the Penal Code unless otherwise noted.

Three of the officers involved in the incident testified at trial, and an audio recording of the incident captured by one of the officer's belt recorders was played for the jury. The defense did not present any evidence at trial.

A. *Witness Testimony*

1. *Officer Domenico Ancona*

On August 19, 2016, at approximately 10:30 p.m., Officer Ancona received a dispatch call informing him there was a "suspicious subject" sitting near the railroad tracks at the Fontana Metrolink train station. He arrived within one minute of receiving the call and was the first police officer to arrive at the scene. He was wearing a uniform and driving a marked patrol vehicle.

Ancona testified he had worked as a police officer for 10 years and received specialized training on how to deal with people under the influence during his basic training through the San Bernardino County Sheriff's Academy. Upon completing his basic training, he entered into a field training program with senior police officers and received on-the-job training with specialized units, including narcotics teams, by assisting and serving search warrants and dealing with people under the influence. As a canine handler, Ancona was also part of the California Narcotics Canine Association and attended a weeklong seminar pertaining to narcotics, transportation, sales, packaging, and protection.

On arrival at the scene, Ancona turned on the high beam spotlight and headlights of his police vehicle because it was dark outside. He immediately observed Carlon crouched down on the sidewalk mumbling, grinding his teeth, sweating profusely,

rocking violently, scratching, and grabbing around his neck, shoulders, and arms. Ancona also saw Carlon rubbing his body before tucking his left hand down near his groin. Carlon was about 20 feet north of the train tracks, near a gutter or sewer drain and a manhole cover.

Carlon was pale and had a white chalky buildup around his mouth that was visible against his dark beard. Ancona saw an item in Carlon's right hand but was unable to identify it because Carlon kept moving his arms and hands around. Carlon's eyes were wide open and did not appear to be affected by the patrol vehicle's lights. He looked "at . . . and through" the officers as if they were not even there. Based on these observations, Ancona believed Carlon was under the influence of methamphetamine and may have been armed with a weapon.

At trial, Ancona explained that methamphetamine can elevate a person's heart rate or cause an irregular heartbeat, cause body temperature to rise, and cause profuse sweating in an attempt to cool down. It also causes eyes to dilate, pupils to enlarge, and rapid processing of multiple thoughts. A person's focus changes very rapidly from subject to subject and he or she can slide into a "fight-or-flight" scenario in his or her head.

After exiting his vehicle, Ancona saw a teenager riding southbound on a bicycle. Ancona then called out to Carlon. Carlon looked at him briefly, then looked away in various directions and acted as if Ancona were not there. Ancona watched Carlon as he waited for backup to arrive. Ancona informed dispatch of his observations and requested

traffic be shut down in the area and the officers' radios be used only for emergencies so they could coordinate during the arrest.

Officer Mutter then arrived at the scene with his police service dog, Wyatt, followed by Sergeant Robbins and Officer Morales.[2] All of the officers were in uniform and blocked off traffic with their marked patrol vehicles. The officers made a semicircle around Carlon, identified themselves as police officers, and repeatedly asked Carlon to "show his hands" and "lie down" on the ground. Carlon failed to comply. Instead, he continued looking around, rocked violently, ground his teeth, and mumbled.

Ancona testified police officers are trained to approach subjects who are uncooperative or not obeying the officers' verbal commands with an "ask-tell-make" scenario. Specifically, they are trained not to meet the person resisting arrest with equal force, but are taught to escalate above the force to minimize the amount of time they are engaged in the scenario and avoid injury to both parties. Employing this approach to gain compliance, the officers planned to use the least amount of force possible, beginning with their mere presence and use of verbal commands, and escalating (as necessary) to deployment of nonlethal sponges (similar to beanbags), the police service dog, and taser.

After Carlon failed to comply with the officers' verbal commands, Officer Robbins deployed a nonlethal sponge round, which hit Carlon's left side. In response, Carlon stood up, paused, and looked at the officers. The officers commanded Carlon to "get

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[2] Officer Louis Rios and Corporal Andrew Vestey were also present at the scene.

down on the ground" and "lie down", but he again failed to comply. Officer Morales then hit Carlon's left side with another nonlethal sponge round.

Carlon ignored the officers' orders and started advancing toward them. Noting this conduct, Mutter deployed his police service dog, and the dog bit Carlon in the left forearm. Carlon appeared angry, spun the dog around, and began swinging and punching the dog, causing the dog to release his bite and fall to the ground. Carlon then started running toward the officers until the dog recovered and bit him in the left leg, taking Carlon down to the ground. Carlon grabbed the dog by the neck and began pulling and swinging him from side to side. He gripped the dog's neck with his hands, trying to choke him. Ancona and the other officers ordered Carlon to stop fighting the dog, but he did not comply. Carlon continued resisting the officers and fighting the dog by swinging his arms and fists, and kicking his legs. In response to these actions, as well as Carlon's failure to comply with the officers' commands, Ancona struck Carlon's body with his baton.

The baton strike caused Carlon to let go of the dog's neck, but did not stop him from swinging his arms and fists or kicking his legs toward the officers and dog. When Carlon tried to get up from the ground, Ancona ordered him to roll over onto his stomach, but Carlon did not comply. To stop him from fighting the officers, Ancona struck Carlon's torso and arm with his baton.

When Ancona heard an officer say "taser," he repeated the word to confirm, and stepped about a foot away from Carlon. Morales then deployed two taser rounds, allowing Ancona to rotate Carlon while ordering him to get on his stomach. Carlon

continued swinging his arms and kicking his legs toward the officers and their dog. Although Ancona was able to grab Carlon's left arm with both hands, Carlon was still able to pull Ancona back and forth in an attempt to free himself. Fearing Carlon was trying to free his arm, and not knowing whether Carlon had a weapon, Ancona followed his training by placing his knee toward Carlon's elbow to pin his arm down with body weight.

Carlon never stopped resisting. Ancona transferred his body weight to Carlon's left shoulder and was able to pull Carlon's arm behind his back. With the assistance of another officer, Ancona was finally able to handcuff Carlon. After the canine released Carlon's leg, Carlon began kicking at the officers, who then tied a nylon cord around his ankles.

2. *Officer Jose Morales*

Officer Morales testified that when he arrived at the scene, he observed Carlon crouched on the sidewalk. Morales exited his vehicle to assess the situation and then went back to his vehicle to grab his nonlethal 40-millimeter sponge round launcher. Taking into account Carlon's noncompliant behavior, the officers agreed to implement the "ask-tell-make" scenario Officer Ancona described in his testimony. Morales's testimony regarding the sequence of events that led up to Carlon's arrest was consistent with Ancona's testimony.

In addition, Morales testified he had been employed as a police officer for four years and had received basic and departmental training on how to use the taser. His training included being shot in the back with a taser so that he knew the feeling and how

it immobilized a person's body. Morales also described the two different ways a taser could be used: from a distance as a probe, or as a dry stun applied directly to the person's body, both of which had to be used on Carlon due to his continued noncompliance and violent resistance.

Morales also testified that even after Carlon was arrested, he continued to be aggressive, angry, and noncompliant. When the paramedics arrived to transport Carlon to the hospital, he had to be picked up and forced onto the gurney. At the hospital, Carlon was upset, tried to rip the restraints off, and did not allow anyone to work on him. After being advised of his *Miranda*[3] rights, Carlon agreed to speak to Morales. Carlon initially said he did not remember what happened, but then admitted to swinging the dog when it was biting his arm and leg. Carlon also remembered the officers telling him to lie down on the ground, but said he did not do so because he "would've been jumped fucking trying to fight on the ground." Morales was wearing an audio belt recorder during his interview with Carlon and the audio recording was played for the jury.

3. *Officer Casey Mutter*

Officer Mutter testified consistently with the other officers regarding the sequence of events leading to Carlon's arrest. Likewise, Mutter testified that based on his past experiences in dealing with persons under the influence of a central nervous system stimulant, they can often be very erratic, violent, dangerous, and unpredictable.

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3 *Miranda v. Arizona* (1966) 384 U.S. 436, 478-479.

In addition, Mutter indicated he had worked as a police officer for 10 and one-half years and had been the police service dog's canine handler since December 2014. He and his canine initially went through a month-and-a-half bonding period and a six-week basic handler's course totaling 210 hours, followed by 20 hours of monthly training. Mutter said he was trained to deploy his canine on suspects in "dangerous type situations where [the suspect] poses a danger to [Mutter], [his] fellow officers, or the general public." Mutter gave his dog the bite command based on this training and experience; his personal knowledge that individuals under the influence of methamphetamine are often erratic, violent, dangerous, and unpredictable; his assessment Carlon was going to assault the officers; and Carlon's noncompliance and aggressiveness.

B. *Motions to Dismiss Charges for Insufficient Evidence*

Prior to trial, Carlon's defense counsel moved to dismiss the charges for insufficient evidence at the preliminary hearing under section 995. The court denied the motion based on evidence at the preliminary hearing that the testifying officer (1) believed Carlon was under the influence, (2) was clearly in uniform and a marked police unit, and (3) identified himself to Carlon. The court also relied on Morales's testimony that Carlon was aware of "what was going on" for purposes of establishing Carlon's awareness during the incident. The trial court summarized the proffered evidence as follows:

> "There is testimony at Page 4, . . . Line 10 as to the officers' observations and belief that your client was under the influence. There's testimony at Page 4 that the officer at that point that was testifying was clearly in a uniform. That's at Line 19 to 23, that he was there with a marked police unit, Lines 24 through 28. And that

> he identified himself. [¶] Also, with regard to the defendant knowing what was going on, his statement to Officer Morales at Page 32, lines 26 through 28 and on to Page 33 at Line 1 indicates that he was aware of what was going on. [¶] So for purposes of preliminary hearing, there was sufficient evidence to cover each of the issues that you raised. And I am going to deny the 995 motion."

After trial, the defense made an oral motion to dismiss the charges for insufficient evidence under section 1118.1. Carlon's counsel argued Carlon did not know the police officer was performing his duty because Carlon had a blank stare, was not responding to the officers, and was looking from left to right. Counsel also argued that Carlon's voluntary intoxication could negate the required finding that he specifically intended to willfully and maliciously interfere with the canine, reasoning Carlon only hit and kicked the dog to get it off of him.

The prosecution countered with evidence of the police officers' presence in uniform and marked cars, and argued they announced themselves as police officers and gave Carlon lawful commands. There was also evidence that Carlon made statements admitting he could hear the officers, remembered fighting them, and remembered swinging the canine around.

The court denied the motion, finding there was sufficient circumstantial evidence for the jury to find that Carlon knew they were police officers and that he was maliciously attacking the dog.

DISCUSSION

On appeal, Carlon challenges only the sufficiency of the evidence supporting his convictions for resisting an executive officer by force or violence, and willful

interference with a police service animal.[4] He maintains the prosecution failed to meet its burden of proving the police officers acted lawfully within the scope of their duties—i.e., without using unreasonable or excessive force—in arresting him and deploying the police service dog. Instead, he claims he was not acting aggressively when police deployed force to effectuate his arrest, and he was reasonably acting in self-defense when the canine attacked him. We reject Carlon's contentions and find that there was sufficient evidence to support both convictions.

A. *Standard of Review*

" 'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' " (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.) That the evidence is circumstantial rather than direct does not preclude a finding that the evidence is sufficient to support the judgment. (*People v.*

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4 Carlon does not challenge the jury instructions given at trial.

Pierce (1979) 24 Cal.3d 199, 210.) The uncorroborated testimony of a single witness is sufficient to support a conviction unless the testimony is physically impossible or inherently improbable. (*People v. Canizalez* (2011) 197 Cal.App.4th 832, 845, citing *People v. Scott* (1978) 21 Cal.3d 284, 296.)

B. *Analysis*

1. *Section 69*

Section 69 provides that any "person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty" is punishable by a fine or imprisonment, or both. "The statute sets forth two separate ways in which an offense can be committed. The first is attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law; the second is resisting by force or violence an officer in the performance of his or her duty." (*In re Manuel G.* (1997) 16 Cal.4th 805, 814; accord, *People v. Smith* (2013) 57 Cal.4th 232, 240 (*Smith*).) A conviction under the second theory, which the prosecution pursued here, requires proof "the defendant resist[ed] the officer 'by the use of force or violence' " and "that the officer was acting lawfully at the time of the offense." (*Smith*, at p. 241.)

It is also well established that because a police officer is not permitted to use unreasonable or excessive force in arresting or detaining an individual, the individual is lawfully entitled to use reasonable force to defend himself or herself. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46-47; *People v. Jones* (1970) 8 Cal.App.3d 710, 717; *People*

v. Curtis (1969) 70 Cal.2d 347; but see *Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321.) The individual who uses reasonable force in that context is not criminally liable for having done so. (*People v. Jones* (1981) 119 Cal.App.3d 749, 756; *People v. White* (1980) 101 Cal.App.3d 161, 168.) Whether the officers' use of force was excessive is a question of fact for the trier of fact. (*White,* at p. 168.)

Claims of excessive force are analyzed to determine whether the officers' actions are " 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Graham v. Connor* (1989) 490 U.S. 386, 397.) This standard is deferential to the police officer's need to protect himself and others, recognizing "that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." (*Ibid.*) It involves consideration of the totality of the circumstances, including "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Id*. at p. 396.)

Applying these principles, we conclude substantial evidence supports the properly instructed jury's conclusion that Carlon resisted the officers by use of force or violence, and that his conduct was not justified by any use of excessive force by the officers. First, it was reasonable for the jury to conclude the officers were lawfully performing their duties as peace officers when they legally detained Carlon for being under the influence of methamphetamine. The prosecution laid the foundation for the officers' training and

experience in dealing with a person who is under the influence of a controlled substance. The officers then linked the signs and symptoms they were trained to identify with the objective symptoms Carlon displayed during the incident.

Ancona testified Carlon was pale and had a white chalky buildup around his mouth, noticeable because of his dark beard. Carlon was also sweating profusely, rocking violently, and grabbing himself. Mutter testified that Carlon's body was twitching, his head was moving from side to side, and he was looking back and forth, from left to right, and in a semicircle direction, with a blank stare on his face. This evidence constituted substantial evidence supporting the jury's finding that the officers were lawfully performing their duties when they developed and implemented a tactical plan to arrest Carlon for being under the influence of a central nervous system stimulant.

Second, it was reasonable for the jury to conclude the officers used reasonable force to detain and arrest Carlon. The officers testified at length about the "ask-tell-make" scenario they employed during Carlon's arrest, which involved escalating use of force. The officers explained they began with the least amount of force possible, starting with their mere presence and verbal commands, followed by the nonlethal sponges, then by deployment of the police service dog and taser.

The prosecution also presented evidence about the officers' training and experience regarding how and when to use each type of force, including the nonlethal sponges, the canine, the baton, the taser, and the elbows as impact weapons. Consistent with this training, when Carlon repeatedly ignored the officers' commands to lie on the ground and show his hands, and then responded violently toward the officers and the

police service dog, the officers deployed the minimum amount of force necessary to subdue and arrest him. Based on this testimony, the jury could reasonably conclude the police officers' actions were consistent with their training and experience to escalate above the force that they were being met with by a person who was violent, forcibly resisting arrest, and under the influence of methamphetamine.

Third, it was reasonable for the jury to conclude Carlon acted violently and aggressively toward the officers, rather than in self-defense. (See *People v. Bernal* (2013) 222 Cal.App.4th 512, 519 ["force used by a defendant *in resisting* an officer's attempt to restrain and arrest the defendant is sufficient to support a conviction" under § 69(a)]; *People v. Carrasco* (2008) 163 Cal.App.4th 978, 985-986 (*Carrasco*) [only the greater offense was committed where defendant would not remove his hand from a duffle bag, he "had to be physically taken to the ground," and he "failed to comply with several officers' repeated orders to relax and . . . 'stop resisting' "]; *Smith*, *supra*, 57 Cal.4th at p. 245 [only the greater offense was committed where the defendant "physically resisted" jail guards].) It was reasonable for the jury to conclude that by standing up; advancing and running toward the police officers; continually swinging and kicking his arms, fists, and legs; attempting to get up off the ground; and punching, kicking, and attempting to strangle the dog, Carlon was exerting physical force and violence so as to injure the officers.

Carlon relies on several Ninth Circuit cases to bolster his argument that the police officers' actions constituted excessive force under the standards laid out in *Graham*, *supra*, 490 U.S. at page 397 because: (1) it is excessive for police to use intermediate

force to detain a suspect for a misdemeanor; (2) mere failure to obey commands does not justify the use of force that can cause serious injury to the suspect; and (3) such force is not justified merely because police officers might fear for their safety, without further proof they were actually in danger. All of the Ninth Circuit opinions can be distinguished on the facts and are not persuasive here.

Carlon cites the *Young* and *Bryan* cases in support of his argument that "passive" noncompliance or resistance should not be met with significant force to effect an arrest for misdemeanor violations. (*Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156; see *Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805 (*Bryan*).) The *Young* case involved a traffic stop for a seatbelt violation, in which a sheriff's deputy pepper-sprayed a suspect from behind and struck him twice with a baton after the suspect disobeyed the deputy's order to remain in his truck when he exited his vehicle to provide a copy of his vehicle registration. (*Young*, at pp. 1158-1160.) In *Bryan*, the court held the officer used excessive force when he deployed his taser in dart mode to apprehend a suspect for a seatbelt infraction, even though the suspect was unarmed, made no threatening statements or gestures, and did not resist or attempt to flee the officers. (*Bryan*, at pp. 821-822.)

Here, Carlon was arrested for being under the influence of methamphetamine. Although a misdemeanor, it is hardly akin to a motor vehicle infraction in terms of the risk he posed to himself, the officers, and members of the general public. Before any force was deployed, Carlon's observed behaviors were, to put it mildly, bizarre—a violent rocking motion, grabbing at areas of his upper body, and tucking his hands near his knees, chest, and groin. One of the officers thought he saw an item in Carlon's right hand

that he could not identify. Several officers testified to their training and experience that persons under the influence of methamphetamine often respond unpredictably and with violence. Under these circumstances, the jury could conclude the officers acted reasonably in deploying a nonlethal sponge round to gain compliance from a noncompliant Carlon.

At this point Carlon changed from being "passively" noncompliant to actively resistant. On being hit with the second sponge round, he turned and advanced on the officers, continuing all the while to ignore their verbal commands. Carlon thus responded with a significant amount of physical force, violence, and resistance, which posed an immediate threat to the officers, their service dog, and anyone else in the area. It was only then that the officers deployed the dog and the confrontation became truly violent. Based on the evidence, it was reasonable for the jury to conclude the officers reasonably escalated their use of force to subdue the combative, noncompliant, and possibly armed Carlon, whom they believed was under the influence of a central nervous system stimulant.

Carlon also cites *Bryan* and *Smith* for the proposition that "there were clear, reasonable, and less intrusive alternatives" available to the police. (*Bryan, supra*, 630 F.3d at p. 831; *Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 701.) Yet the *Bryan* court also opined that, although officers "must *consider* less intrusive methods of effecting the arrest and that the presence of feasible alternatives is a *factor* to include" in the court's analysis, the court did not "challenge the settled principle that police officers need not employ the 'least intrusive' degree of force possible." (*Bryan*, at p. 831, fn. 15.)

Carlon, however, does not suggest any alternative methods the officers could have used in detaining or subduing him. Here, the officers testified they employed less intrusive means to subdue Carlon and gain his compliance; these means were only escalated based on Carlon's increasingly violent resistance.

The *Deorle* case is equally unpersuasive. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1281 ["a simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern"].) Ancona's testimony was not merely a conclusory incantation that he feared for his and the public's safety based solely on the item he thought Carlon had in his right hand or the potential Carlon *may* behave erratically or violently, based on his objective symptoms of being under the influence. Rather, Ancona testified his priority from the outset of the encounter was to preserve public safety. It was 10:30 p.m. and dark outside. Carlon was only 20 feet away from the railroad tracks near a public commuter train station. On arrival, Ancona saw a teenager riding a bicycle nearby. Ancona observed Carlon and waited for backup before approaching. Ancona also testified the officers used force in direct response to Carlon's continued noncompliance and escalating level of physical resistance and violence, which included him standing up, running toward the officers, continuously swinging his arms and fists toward the officers, attempting to get up off the ground, and punching, choking, and kicking the police service dog. Thus, the "jurors were entitled to accept or reject all of the testimony, or a portion of the testimony, of any of the . . . witnesses." (*People v. Lacefield* (2007) 157 Cal.App.4th 249, 261, disapproved on another ground in *Smith, supra*, 57 Cal.4th at p. 242.)

In sum, the evidence was sufficient for the jury to find the officers were lawfully performing their duties when they attempted to arrest Carlon, and that Carlon's conduct was not justified by the need to defend himself against excessive force by the officers. On this record, if Carlon resisted the officers, he did so only by force or violence. Accordingly, we need not address the issue of whether Carlon should have been convicted only of the lesser included offense of resisting a peace officer without force under section 148, subdivision (a)(1). (See *Carrasco*, *supra*, 163 Cal.App.4th at p. 985 ["an accused cannot have resisted arrest forcefully without also having resisted arrest"].)

2. *Section 600, Subdivision (b)*

Carlon similarly challenges the sufficiency of the evidence supporting the jury's rejection of his self-defense claim on the charge of willfully interfering with a police animal under section 600, subdivision (b). We likewise reject this challenge.

Section 600, subdivision (b) provides, in relevant part: "Any person who willfully and maliciously *and with no legal justification* interferes with or obstructs a horse or dog being used by a peace officer in the discharge or attempted discharge of his or her duties, . . . by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished" by a fine or imprisonment, or both. (Italics added.)

The record here supports the jury's finding that Carlon willfully interfered with the police service dog. The jury heard testimony that Mutter had received extensive training as a canine handler. In keeping with the officers' "ask-tell-make" strategy of escalating force above that of Carlon's, Mutter testified he deployed the dog only after Carlon failed to comply with the officers' verbal commands and after both nonlethal sponges had

already been deployed. Carlon was standing up, was advancing toward the police officers, and appeared angry when the dog was deployed the first time. The jury then heard testimony that Carlon spun around with the dog and punched it in the head.

After the dog released his bite and fell to the ground, Carlon began running toward Mutter and Ancona. The dog recovered and bit Carlon's left leg, as he was trained to do, taking Carlon down to the ground. The jury then heard testimony that Carlon was engaged in a one-on-one fight with the dog. The officers testified Carlon was given verbal commands to stop fighting the dog, but continued swinging his arms and fists, and trying to kick the dog. The officers also testified Carlon's hands were "gripping" around the dog's neck in a choking motion.

Based on this testimony, the jury could reasonably conclude the officers did not use unreasonable or excessive force by deploying the police service dog to subdue Carlon, and that Carlon was not entitled to defend himself against the lawfully deployed dog. Therefore, substantial evidence supports the jury's finding that Carlon "willfully and maliciously and with no legal justification interfer[ed] with or obstruct[ed] a . . . dog being used by a peace officer in the discharge or attempted discharge of his or her duties. . . ." (§ 600, subdivision (b).)

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.